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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TOMMY ALASTRA PRODUCTIONS,
INC., a California corporation,

Plaintiff,

v.

HUGO MCDONAUGH, an individual;
PERPETUAL ALTRUISM, LTD a U.K.
limited liability company, and DOES 1-
20, inclusive,

Defendants.

PERPETUAL ALTRUISM, LTD, a U.K.
limited liability company,

Counterclaimant,

v.

TOMMY ALASTRA PRODUCTIONS,
INC., a California corporation, TOMMY
ALASTRA, an individual, and ROES 1-
10, inclusive,

Counter-Defendants.

CASE NO. 2:25-cv-01257-AB-KES

Hon. André Birotte, Jr.

**DEFENDANT PERPETUAL
ALTRUISM LTD'S OPPOSITION
TO COUNTER-DEFENDANTS'
NOTICE OF MOTION AND
MOTION FOR ALTERNATIVE
SERVICE ON DEFENDANT HUGO
MCDONAUGH**

Hearing Date: January 9, 2026

Time: 10:00 am

Court Rm. 7B

Action Filed: February 14, 2023

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1 **I. INTRODUCTION**

2 Plaintiff filed this case in February of 2023. (Dkt. No. 1-1.) Throughout
3 2023, Defendant Perpetual Altruism (“PA”) advised Plaintiff that it must comply
4 with the Hague Service Convention to serve it. (Dkt. No. 1-11.) Plaintiff rebuffed
5 those good faith efforts, doubling down on legally invalid service attempts. (Dkt.
6 No. 1-8.) In December of 2023, PA succeeded on two motions to quash, with the
7 state court finding that Plaintiff failed to comply with either the Hague Service
8 Convention or California law. (Dkt. No. 1-36.)

9 Notably, in 2023, the trial court advised Plaintiff that “actual knowledge of
10 these proceedings” does not excuse a failure to effectuate proper service, to abide by
11 California law, or to abide by the Hague Service Convention. (*Id.*). Two years
12 later, in the present motion, Plaintiff repeats that failed argument, which remains as
13 devoid of legal merit now as it did when Plaintiff first asserted it in 2023.

14 Concomitantly, in November of 2023, PA advised Plaintiff that Hugo
15 McDonaugh moved to Portugal and advised it exactly how to effectuate proper
16 service on McDonaugh in Portugal through the Portuguese Central Authority. (Dkt.
17 51-1, ¶2). Plaintiff’s assertion that McDonaugh “relocated from the United
18 Kingdom to Portugal without notification to opposing counsel or the Court” (Motion
19 4: 25-26) is, quite frankly, a boldfaced lie of the most egregious variety. Indeed,
20 oral argument on PA’s successful motions to quash in December of 2023 centered
21 on whether service in the United Kingdom could proceed against McDonaugh given
22 that he had moved to Portugal, a fact disclosed in writing as well.

23 As PA’s moving papers concede, two years later, Plaintiff has not even
24 attempted to present service documents to the Portuguese Central Authority for
25 service on McDonaugh. Had it done so, this Motion would be moot.

26 Had it exercised even that minimal diligence, McDonaugh would have been
27 served years ago.

28 Plaintiff notes that PA is a party to this action. As the Court is aware,

1 discovery is open. Plaintiff could have propounded discovery on PA months ago,
2 obtained McDonough's address in Portugal from it if for whatever reason it wanted
3 to knock on his door to serve him as opposed to going through the Portuguese
4 Central Authority, and completed service some time ago.

5 Instead, contrary to its naked assertions in its moving papers, Plaintiff has
6 exercised no diligence at all. It presents no evidence that it attempted service
7 through the Portuguese Central Authority, despite being aware of McDonough's
8 residence in that country for over two years, as it has not taken that basic step. It
9 presents no evidence that it propounded basic discovery on PA to obtain
10 McDonough's physical address so that it could serve him in person, because it did
11 not exercise that minimal diligence. Plaintiff's motion is the result of, in the best
12 light, hapless flailing that does not call for the relief that it seeks.

13 Nor is that relief permissible. Email service of process of an American
14 lawsuit on a resident of Portugal appears to violate international law. Indeed, this
15 Court need only review the legal procedural history of Delta Airlines hijacker and
16 convicted murderer George Edward Wright to get a flavor for Portugal's strict
17 adherence to international treaties and law as they relate to extraterritorial judicial
18 proceedings. (<https://www.fbi.gov/wanted/dt/george-edward-wright>;
19 [https://en.wikipedia.org/wiki/George_Wright_\(fugitive\)](https://en.wikipedia.org/wiki/George_Wright_(fugitive))).

20 Finally, the Court should not countenance Plaintiff's attempts to blame
21 McDonough or PA for its own utter lack of diligence. Plaintiff states that he was
22 somehow hamstrung by "Defendant's strategic relocation to Portugal and deliberate
23 concealment of his address." McDonough concealed nothing, his counsel
24 immediately notified Plaintiff of his relocation to Portugal in November of 2023 and
25 advised it how to serve him, despite having no obligation to do so. (Dkt. 51-1, ¶2).
26 The only thing strategic about his relocation was a strategy to live in a warm, sunny,
27 affordable country as opposed to a cold, rainy, expensive country suffering the
28 predictable financial doldrums occasioned by the historically poor Brexit decision.

1 “The Great British Exodus” to Portugal for scores of Brits following Brexit was a
2 larger cultural moment brought on by crippling economic pressures having nothing
3 to do with Plaintiff’s entirely frivolous claims in this litigation.

4 ([https://www.jobbatical.com/blog/post-brexite-uk-talent-exodus-british-workers-](https://www.jobbatical.com/blog/post-brexite-uk-talent-exodus-british-workers-chose-portugal)
5 chose-portugal). Any suggestion that McDonaugh followed the British masses and
6 moved to Portugal because of this litigation is so delusional that Generation Alpha
7 slang is needed to describe Plaintiff’s position – it is “completely delulu.”

8 **II. THE COURT SHOULD DENY PLAINTIFF’S MOTION AND DISMISS**
9 **THE CASE AGAINST MCDONAUGH FOR FAILURE TO EFFECTUATE**
10 **SERVICE OR ACT WITH DILIGENCE FOR THREE YEARS**

11 **A. The Proper Order at this Time Would Be to Dismiss this Action**
12 **Against McDonaugh for Failure to Serve**

13 On July 29, 2025, this Court issued an order to show cause re: dismissal for
14 failure to serve McDonaugh. (Dkt. 38.) The Court provided Plaintiff an extension
15 until January 14, 2026 to serve McDonaugh. (Dkt. 55.)

16 Since that order issued, Plaintiff has failed to exercise reasonable diligence. It
17 should have timely submitted the complaint to the Portuguese Central Authority to
18 serve McDonaugh under the Hague Convention. It failed to do that. Alternately, it
19 should have immediately served PA with written discovery to obtain McDonaugh’s
20 current address if it instead wished to serve him personally, perhaps even seeking to
21 shorten time given the constraints imposed by Rule 4 and the Court’s order. It did
22 not seek to shorten time, it failed to serve written discovery at all.

23 Instead, it used “Tracers,” a “cloud-based investigative and data research
24 software tool” “designed to help you find key pieces of information” available from
25 United States public records. (www.tracers.com; See also, Motion 5: 5-12.) Why
26 Plaintiff believed the address of a UK national living in Portugal would appear in a
27 United States public records search strains the imagination.

28 It claims it tasked an employee of its own lawyer’s office, Amy Bearman, to

1 contact “several known associates of Defendant McDonaugh” to ascertain his
2 address in Portugal. (Motion 5: 18-21.) Why did it not just have her draft an
3 interrogatory to PA requesting his address? That would have gotten the job done
4 and quickly. Having a law firm employee make cold calls to “known associates”
5 does not demonstrate diligence. The Court should consider this – how many of
6 Judge Birotte’s “known associates” know his home address off the top of their heads
7 and how many would give it to a stranger calling out of the blue.

8 Plaintiff feigns surprise that McDonaugh does not list his home address on
9 social media. (Motion 5: 22-23.) Who lists their home address on Instagram or
10 LinkedIn or the Facebook for public consumption? (Probably the same people who
11 list their pin code for their ATM card on the same sites.)

12 Evidently, Plaintiff also employed a private investigative service located in
13 Chandler, Arizona (<https://privin.net/>) and a process server to try to locate
14 McDonaugh in Portugal. (Motion 5:24 – 6:4.) That Joshua Bridges, a resident of
15 Washington State who works for that Arizona service found “no indication that
16 [McDonaugh] is in Portugal” reflects not on McDonaugh, who lives openly in that
17 country as a registered foreign national, but on the foolishness of employing a small
18 private investigative firm in the western United States to locate an individual living
19 halfway around the world.

20 Not touching our current domestic immigration moment with a ten-foot pole,
21 a novice gumshoe can find a registered UK national in the EU following Brexit.
22 That ill-conceived legal framework vitiated the freedom for UK citizens to travel on
23 the European continent without restrictions and requires UK citizens to declare as
24 immigrants in the same way Americans or Tunisians or Japanese foreign nationals
25 have long had to when residing in the European Union, to name but a few countries
26 not privy to the benefits of EU citizenship in the Schengen Area. (See, *e.g.*,
27 <https://www.gov.uk/travel-to-eu-schengen-area>.)

28 All of this was misguided, in the best light, as, again, Plaintiff could have

1 either submitted the complaint to the Portuguese Central Authority since 2023 to
2 serve McDonaugh, a registered foreign national, or propound discovery on PA to
3 obtain his address if it wished instead to serve McDonaugh personally.

4 This, shall we say, lack of urgency, skill, or crafty strategy should not be
5 rewarded.

6 Pursuant to Rule 4(m), “[i]f a defendant is not served within 90 days after the
7 complaint is filed, the court—on motion or on its own after notice to the plaintiff—
8 *must* dismiss the action without prejudice against that defendant or order that service
9 be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added). “This
10 subdivision (m) does not apply to service in a foreign country under Rule 4(f),
11 4(h)(2), or 4(j)(1)[.]” *Id.* “Nevertheless, the time to serve a defendant in a foreign
12 country is not unlimited.” *United Fin. Cas. Co. v. R.U.R. Trans., Inc.*, No. 22-333,
13 2022 U.S. Dist. LEXIS 202831, 2022 WL 16747283, at *3 & n.1 (S.D. Cal. Nov. 7,
14 2022) (collecting cases imposing “reasonable limits on the time to effect service in a
15 foreign country under the court's inherent authority to manage its docket”).

16 In no scenario would three years fall within reasonable limits as set forth in
17 the collection of decisions cited in the *R.U.R. Trans., Inc.* case.

18 District courts have the inherent power to achieve the orderly and expeditious
19 disposition of cases by dismissing actions under Federal Rule of Civil Procedure
20 41(b) for failure to prosecute and failure to comply with a court order. *See Link v.*
21 *Wabash R.R. Co.*, 370 U.S. 626, 629-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962). The
22 following factors are relevant to the Court's determination of whether to dismiss an
23 action for failure to prosecute: “(1) the public's interest in expeditious resolution of
24 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
25 defendants; (4) the public policy favoring disposition of cases on their merits; and
26 (5) the availability of less drastic sanctions.” *Carey v. King*, 856 F.2d 1439, 1440
27 (9th Cir. 1988) (citation omitted).

28 Here, the first two factors favor dismissal of McDonaugh. Plaintiff's failure to

1 serve the Complaint on him – for three years – has made it impossible to move this
2 case toward completion. This hinders the Court's ability to move this case toward
3 disposition and indicates a lack of intent to litigate diligently. *See Pagtalunan v.*
4 *Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (“The public's interest in expeditious
5 resolution of litigation always favors dismissal”).

6 The third factor also weighs in favor of dismissal. A presumption of prejudice
7 to the defendant arises when there is a failure to prosecute diligently. *See In re*
8 *Eisen*, 31 F.3d 1447, 1452-53 (9th Cir. 1994). That presumption may be rebutted
9 where a plaintiff proffers an excuse for delay, but here, Plaintiff cannot offer a
10 credible excuse for failing to present the Complaint to the Portuguese Central
11 Authority at all since 2023 for service on McDonaugh or for failing to serve basic
12 discovery on PA to obtain his address so that it can serve him in person.

13 It is Plaintiff's responsibility to move the case toward disposition at a
14 reasonable pace. *See Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir.
15 1991). Plaintiff has not discharged this responsibility, nor does using a United States
16 records database to find a Portuguese address for a UK national or employing a
17 worker from his lawyer's office to cold call McDonaugh's friends or employing a
18 service of process company or an investigator in the western United States to try to
19 locate his Portuguese address suggest otherwise. There were two very simple, well-
20 worn paths from A to B and Plaintiff studiously and for years avoided both of them.

21 Finally, the fifth factor weighs in favor of dismissal. In the OSC, the Court
22 expressly warned Plaintiff that a failure to serve may result in dismissal. The Court
23 offered a less drastic remedy, an extension of time to serve, and Plaintiff still failed
24 to serve written discovery or attempt service through the Portuguese Central
25 Authority. Dismissal at this juncture is proper.

26 Balancing all of the *Carey* factors, the proper remedy at this time is not to
27 give Plaintiff a get out of jail free card that likely violates international law, but to
28 dismiss this action as to McDonaugh for failure to properly serve him for almost

1 three years. (We are not just beyond the ninety-day mark. Plaintiff has had since
2 early 2023, a full year before Shohei Ohtani signed with the Dodgers, to serve
3 Plaintiff.)

4 **B. McDonaugh’s Knowledge of This Action Does Not Provide a**
5 **Substitute for Proper Service**

6 In 2023, Plaintiff argued that constructive notice to McDonaugh should
7 relieve it of its service obligations, a contention the state court affirmatively
8 rejected. (Dkt. No. 1-36.) It again alludes to that position in Section III.C.

9 “A federal court does not have jurisdiction over a defendant unless the
10 defendant has been served properly under Fed. R. Civ. P. 4. While the rule is
11 flexible, without substantial compliance with Rule 4 neither actual notice nor simply
12 naming the defendant in the complaint will provide personal jurisdiction.” *Williams*
13 *v. Bellagio Hotel & Casino*, 728 F. Supp. 3d 1166, 1168 (D. Nev. 2024) (cleaned
14 up, internal citations omitted).

15 That McDonaugh may know of this action through his affiliation with PA is
16 of no legal moment. Absent substantial compliance with Rule 4 – and here there has
17 been no compliance – the Court lacks personal jurisdiction over the UK national and
18 Portugal resident, McDonaugh.

19 **C. The Relief Plaintiff Seeks Does Not Appear to Be Legally**
20 **Permissible**

21 While the district court has the “sound discretion” to authorize alternative
22 methods of service under Rule 4(f)(3), these alternative means granted by the
23 district court must (1) “not be prohibited by international agreement;” and (2)
24 “comport with constitutional notions of due process.” *Rio Props., Inc. v. Rio Int’l*
25 *Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002).

26 “[C]ompliance with the [Hague] Convention is mandatory in all cases to
27 which it applies.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694,
28 705, (1988). Portugal is a signatory to the Hague Convention. *Hale v. Evidencia*

1 *Display*, No.: SACV 15-0538, 2015 U.S. Dist. LEXIS 101297, 2015 WL 4624881,
2 at *3 (C.D. Cal. Aug. 3, 2015) (“According to the U.S. Department of State,
3 Portugal is a party to the Hague Convention.”)

4 “As numerous courts have recognized, binding Supreme Court precedent
5 indicates that the Hague Convention outlines specific methods of service, and that
6 methods of service that are not specifically authorized are impermissible under the
7 Convention.” *Smart Study Co. v. Acuteye-US*, 620 F. Supp. 3d 1382, 1393
8 (S.D.N.Y. 2022). “[S]ome courts have determined that service via email, regardless
9 of a country's objections, is precluded under the Hague Convention.” *Id.* at 1394. It
10 is without doubt that the Hague Convention does not specifically authorize email
11 service. *Id.*

12 While Courts in the Ninth Circuit have approved service by email as
13 substituted services under Rule 4(f)(3) when it is “the method of service most likely
14 to reach” the defendant, specifically an “elusive international defendant,” the
15 leading Ninth Circuit authority that permitted such service involved service in Costa
16 Rica, which is not a signatory to the Hague Convention, such that its prohibition on
17 email service did not apply. *See Rio Props., Inc.*, 284 F.3d at 1016.

18 McDonaugh, of course, has not “made himself impossible to locate
19 physically” as Plaintiff falsely claims, he registered as a foreign national in Portugal
20 as he must following Brexit, he is anything but elusive. And unlike in cases where a
21 defendant truly cannot be located, Plaintiff served PA, permitting it to propound
22 discovery and obtain McDonaugh’s address even where it employed the least
23 competent investigators this side of Inspector Clouseau who were not up to the task.

24 Plaintiff cites to *Browne v. Donalds*, 2023 U.S. Dist. LEXIS 126736 (C.D.
25 Cal. April 13, 2023) for the contention that “Portugal has not objected to email
26 service.” (Motion 8:6-7.) That citation is to a denial by the Honorable André
27 Birotte, Jr. of an *ex parte* application for failure to comply with the Central District
28 Local Rules. There is no indication that any of the parties in that case reside in

1 Portugal (a cursory review of them, including De La Ghetto (representing The
2 Boogie Down Bronx), Ricky Martin (representing Puerto Rico), and Anitta (holding
3 it down for Brazil), suggests they do not), much less any finding that Portugal has
4 not objected to email service. That Court did not even consider that issue.

5 Nor does the other case to which Plaintiff cites to support that contention fare
6 any better. The Court in *Godfrey v. Princess Cruise Lines*, 2016 U.S. Dist. LEXIS
7 204782, *5 addressed email service where the Russian Federation has objected to
8 the methods of service listed in Article 10 of the Hague Convention. That case does
9 not address Portugal or service in Portugal. It certainly does not conclude that
10 “Portugal has not objected to email service.”

11 There is no authority before the Court as to whether Portugal permits an
12 expansion of the Hague Convention beyond its four corners to permit email service
13 even though it is not specifically authorized thereunder. PA is unaware of any
14 authority to suggest Portugal permits expansion of the Hague Convention to allow
15 for email service and despite a diligent search has found no legislative or legal
16 record to suggest that it has taken any position on the matter.

17 What is known is that Portugal, as evidenced by, *inter alia*, the George
18 Wright case demands strict compliance with international law, refusing to extradite
19 a convicted murderer and commercial airline hijacker where the four corners of
20 extradition treaties did not permit extradition because he had obtained Portuguese
21 citizenship. As Portugal was unwilling to expand international law to extradite an
22 actual murderer living in its midst, it strains credibility to assume it would permit
23 expansion of the Hague Convention to excuse Plaintiff’s lack of diligence in the
24 service of process of an American civil lawsuit.

25 Following the finding in *Smart Study Co.*, the Court should not permit email
26 service under Rule 4(f)(3) given the limitations of the Hague Convention.

27 **III. CONCLUSION**

28 Plaintiff had all of 2023 to attempt service on McDonaugh. It had all of 2024

1 to do so. And all of 2025. It failed for three years to affect service on McDonough.
2 At some point, this charade must end.

3 This is not because McDonough was hard to find – his counsel disclosed to
4 Plaintiff where he was and how to serve him in November of 2023 – but because
5 Plaintiff failed to exercise minimal diligence for years.

6 The Court issued an order to show cause re: dismissal and permitted Plaintiff
7 additional time to complete service. Instead of propounding discovery to obtain
8 McDonough’s address to complete service or working through the Portuguese
9 Central Authority, Plaintiff had an employee of his law firm cold call people who
10 might know McDonough and retained a small investigative service in Arizona to
11 find McDonough in Portugal. Under *Carey* and *Link*, the proper course of action at
12 this time is to dismiss this case as to McDonough for lack of service of process for
13 three years, not to permit email service which appears to violate international law.
14 Plaintiff respectfully requests that the Court deny Plaintiff’s motion in full.

15 Dated: December 19, 2025

STEPTOE LLP

16 By: /s/ Ryan M. Lapine

17 Ryan M. Lapine

18 Danika L. Duffy

19 Attorneys for Defendant

20 PERPETUAL ALTRUISM, LTD
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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2025, a copy of **DEFENDANT PERPETUAL ALTRUISM LTD'S OPPOSITION TO COUNTER-DEFENDANTS' NOTICE OF MOTION AND MOTION FOR ALTERNATIVE SERVICE ON DEFENDANT HUGO MCDONAUGH** was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by personal service to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Ryan M. Lapine

Ryan M. Lapine